

NATIONAL SECURITY COUNCIL

ACTION

October 7, 1975

MEMORANDUM FOR: GENERAL SCOWCROFT  
FROM: Richard Ober *RS*  
SUBJECT: Executive Order Establishing Restrictions  
on the Intelligence Agencies

As requested, I have reviewed the draft Executive Order on "Restrictions" received as Tab A to Jack Marsh's memorandum of October 2, 1975 (attached).

In most respects this draft is an improvement on the earlier draft which was discussed at a special interagency meeting held in the Roosevelt Room on September 5, 1975. There are, however, several portions of the present draft which require revision.

Definition of Foreign Counterintelligence:

The most serious problem is that the definition of "foreign counterintelligence" could be interpreted to preclude vital areas of traditional counterintelligence activities. The present definition, which represents a totally different approach from the definition in the earlier draft, is so narrow that it would appear to effectively preclude foreign intelligence agencies from collecting, using, or disseminating information concerning:

- the involvement of foreign powers or their agents in sabotage, subversion, terrorism, assassination, covert action, covert propaganda, and using agents of influence;
- hostile activities, such as the above, against international organizations in which the US participates, such as NATO;
- activities directed against other nations, such as the assassination of foreign leaders visiting the United States;
- terrorist organizations such as the Japanese Red Army, extremist Arab or Latin American guerrilla groups; and
- possibly even hostile activities against US private firms, organizations, institutions, or citizens within the United States.

NSC review completed.

A suggested definition for foreign counterintelligence has been incorporated in the annotated draft at Tab B. An alternative would be to use the language of NSCID No. 5, although this definition should be expanded to cover assassination and terrorism.

#### Protection of Classified Information:

Another problem is that authorization for various activities designed to protect "classified information" in the earlier draft has been narrowed to cover only "information which could disclose foreign intelligence sources and methods".

#### Covert Action:

One subsection (e) in Section II does not belong in this Executive Order since it relates to covert action and not foreign intelligence or foreign counterintelligence. This section is taken from the amendment to the Foreign Assistance Act which requires that the President determine that any covert actions undertaken are important to the national security of the United States. In addition to being an entirely different type of activity than that covered in the rest of the Executive Order, this section refers to purely overseas activities, whereas most of the Executive Order pertains to activities within the United States.

#### Law Enforcement Assistance:

There is an apparent conflict between Section II(h) and Section III(b) of the present draft which should be clarified. The language suggests that foreign intelligence agencies can not provide equipment to LEAA (I(h)) while Section III(b) apparently authorizes provision of "specialized" equipment to any other Federal agency. To improve the organization of the paper, paragraph (h) of Section II should be combined with Section III since they are on the same subject. (The suggested revision in Tab B does not attempt to resolve the above problem since the intent of the distinction, if any, is unknown.)

#### Additional Restrictions:

Section IV would allow an agency head to unilaterally impose more restrictive internal controls than those provided in the Executive Order. This provision might result in limitations on the agency's

ability to fulfill its proper responsibilities if overly restrictive internal regulations were imposed by an agency head from good but misguided motives or because of bureaucratic timidity. Such overly restrictive internal regulations might also have an adverse effect upon the ability of other agencies to fulfill their proper missions. In order to safeguard against such an eventuality, the Executive Order should provide that internal agency restrictive regulations going beyond the Executive Order should be subject to review and approval of the NSC.

Organization of the Executive Order:

The internal organization of the subject matter of the Executive Order would be improved by making the changes indicated below.

- Section II. Reorganize the subparagraphs in the following order: (a), (j), (b), (c), (d), (i), (f), (g), (k). Omit (e) and move (h) and combine it with the present Section III.
- Reverse the order of Sections III and IV.

RECOMMENDATION:

That the revision incorporated in Tab B be used by the NSC representative in the redrafting of the Executive Order.

APPROVE \_\_\_\_\_ DISAPPROVE \_\_\_\_\_

OTHER \_\_\_\_\_

Attachments:

Jack Marsh memorandum of October 2, 1975  
Tab A to Marsh memorandum: Draft EO  
Tab B - Draft EO with suggested changes marked.

THE WHITE HOUSE  
WASHINGTON

October 3, 1975

Dick Ober

Could you please review the attached  
and provide your views to Brent by  
C.O.B Tuesday October 7.

Thanks

Bud

THE WHITE HOUSE

WASHINGTON

October 2, 1975

MEMORANDUM FOR:

PHIL BUCHEN  
BILL COLBY  
✓ HENRY KISSINGER  
ED LEVI  
JIM LYNN  
DON RUMSFELD  
JIM SCHLESINGER

FROM:

JACK MARSH

SUBJECT:

Executive Order Establishing  
Restrictions on the Intelligence  
Agencies

As you know, the President has decided to issue an Executive Order establishing appropriate restrictions on the domestic activities of all agencies and departments in the intelligence community. In view of the work now underway in the Department of Justice to establish appropriate safeguards and restrictions with respect to the Federal Bureau of Investigation, including the FBI's intelligence activities, the President has decided that such an Executive Order should exclude the FBI.

Attached at Tab A is a draft Executive Order establishing appropriate restrictions on the domestic activities of all intelligence agencies except the FBI. This draft Order is based on the work already done by the group established to implement the recommendations of the Rockefeller Commission.

I would appreciate your comments on this draft Executive Order by COB Monday, October 6<sup>th</sup>. To the extent that differences remain, Mike Duval will schedule a meeting of affected agencies to resolve them.

Attachment

EXECUTIVE ORDER \_\_\_\_\_

ESTABLISHING RESTRICTIONS ON FOREIGN  
INTELLIGENCE ACTIVITIES

By virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

SECTION I. Definitions. As used in this Order the following terms shall have the meanings ascribed to them below:

(a) "Collection" means the gathering and storage, or the gathering and dissemination, of information.

(b) "United States" includes the United States, its territories, possessions, and the Commonwealth of Puerto Rico.

(c) "Domestic activities" means activities within the United States.

(d) "Foreign intelligence" means information, other than foreign counterintelligence, on the capabilities, intentions, and activities of foreign powers or their agents.

(e) "Foreign counterintelligence" means information on the capabilities, intentions and activities of foreign powers or their agents with respect to their collection, evaluation or dissemination of intelligence about the United States.

(f) "Infiltration" means secret participation in an organization for the purpose of reporting on it.

(g) "Incidental reception" means the receipt of information, whose collection by an agency is otherwise prohibited by this order, during the course of such agency's authorized foreign intelligence or foreign counterintelligence activities, without specific intent to secure such information from a United States citizen and without direction or request from any other agency of the United States Government.

(h) "Foreign intelligence agency" means any department or agency, or division thereof, which is primarily engaged in foreign intelligence or foreign counterintelligence.

SECTION II. The following activities shall not be conducted either by any foreign intelligence agency or by any other department or agency in pursuit of foreign intelligence or foreign counterintelligence:

(a) Collection, evaluation, correlation or analysis, of information concerning the domestic activities of United States citizens; provided, however, that nothing herein shall preclude:

(1) the collection, evaluation, correlation and analysis of information of foreign intelligence or foreign counterintelligence interest derived from public sources; or

(2) the collection, evaluation, correlation and analysis of:

(i) information on current or former employees (including employees of other Federal departments or agencies detailed for service with the foreign intelligence agency); applicants for employment with such agency; actual or imminent voluntary sources or contacts; current and former contractors and current or former employees or applicants for employment by such contractors; and all persons not included above who must be given authorized access to information which could disclose foreign intelligence sources and methods; provided, however, that the same is done only in accordance with law and by authority from the head of such agency to determine the fitness of such persons to become or remain associated with such agency or to have such access, or in the case of a voluntary source or contact, to determine suitability or credibility, or otherwise to the extent the head of such agency determines is necessary to protect foreign intelligence sources and methods from unauthorized disclosure.

(ii) Information from or about a United States citizen collected abroad or from foreign sources in the course of an authorized foreign intelligence or foreign counterintelligence activity.

(iii) Foreign intelligence from United States citizens provided on a witting and voluntary basis. The foreign intelligence agency shall disclose its identity when seeking such foreign intelligence within the United States from United States citizens. When collection of foreign intelligence within the United States from persons who are not United States citizens results in the incidental reception of information from unknowing citizens, however, the receiving agency shall be permitted to make appropriate use of such information as permitted under this Order.

(iv) Administrative information of the kind customarily developed and utilized by departments and agencies of the Federal government.

(3) the transmission of any information concerning criminal activities that is received through incidental reception to any law enforcement agency with appropriate jurisdiction.

(4) the retention of information collected in violation of this Order to maintain a record for possible court action.

(b) Electronic interception of wire or oral communication the specific purpose of which is to obtain the communications of United States citizens within the United States without the consent of the subject or one of the parties thereof or without prior written authorization of the Attorney General.

(c) Testing of electronic surveillance and monitoring equipment within the United States in violation of law. All such tests shall be with the consent of the persons monitored unless:

(1) it is technically impractical to test such surveillance and monitoring equipment in a manner that would include consent; and

(2) any communication intercepted is disclosed only to test engineers and is destroyed immediately upon termination of the test.

(d) Any opening of mail or examination of envelopes contrary to the explicit provisions of United States postal laws and regulations.

(e) Overseas activities other than those intended solely for obtaining necessary foreign intelligence and foreign counter-intelligence or directly supporting such intelligence gathering activities, unless such activities shall have been determined by the President to be important to the national security of the United States.

(f) Infiltration in the United States of any organizations of United States citizens.

(g) Experimentation with drugs on human subjects, except with the informed consent of each such human subject and in accordance with the guidelines of the National Commission for the Protection of Human Subjects for Biomedical and Behavioral Research.

(h) Provision of services, equipment, personnel or facilities to the Law Enforcement Assistance Administration or State or local police organizations of the United States except as expressly authorized by law.

(i) Access to Federal income tax returns or tax information in violation of statutes and regulations.

(j) Physical surveillance of persons within the United States except to the extent that such surveillance is not in violation of the law and is:

(i) Surveillance, in coordination with the Federal Bureau of Investigation, of foreign nationals in the United States in connection with foreign intelligence or counterintelligence operations;

(ii) Surveillance of a person involved with a foreign national under subparagraph (i), but only to the extent necessary to identify such person; or

(iii) Surveillance, upon written approval by the head of the foreign intelligence agency, of individuals currently or formerly employed by that agency, its present or former contractors, or such contractors' employees, for the purpose of protecting foreign intelligence sources and methods from unauthorized disclosure.

(k) Operation of a proprietary company on a commercially competitive basis with United States businesses except to the minimum extent necessary to establish commercial credibility. No investments by a proprietary company shall be made on the basis of any substantive intelligence not available to the public.

SECTION III. No foreign intelligence agency shall participate in or fund any law enforcement activity within the United States except as may be explicitly authorized by law. Provided, that this prohibition shall not preclude:

(a) Cooperation between a foreign intelligence agency and appropriate law enforcement agencies for the purpose of protecting

the personnel and facilities of the foreign intelligence agency or preventing espionage or other criminal activity related to foreign intelligence or foreign counterintelligence; or

(b) Provision of specialized equipment or technical knowledge for use by any other Federal department or agency.

SECTION IV. Foreign intelligence agency personnel may be detailed elsewhere within the Federal government as authorized by law. Employees so detailed shall be responsible to the host agency and shall not report to their parent agency on the affairs of the host agency except as may be directed by that agency. The head of the host agency and any subsequent successor shall be informed of the detailee's association with the parent agency.

SECTION V. Nothing in this Order shall prohibit any agency having law enforcement responsibilities from discharging such responsibilities pursuant to law. Nor shall this Order apply to any activities of the Federal Bureau of Investigation.

SECTION VI. This Order does not set forth all restrictions under which foreign intelligence agencies are obligated to operate, and it shall not be construed to derogate from any other restrictions imposed by law or by applicable administrative rules, regulations, or directives or to limit the authority of the National Security Council or the head of any foreign intelligence agency to promulgate and enforce further restrictions on the activities of such agency.

EXECUTIVE ORDER \_\_\_\_\_

ESTABLISHING RESTRICTIONS ON FOREIGN  
INTELLIGENCE ACTIVITIES

By virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

SECTION I. Definitions. As used in this Order the following terms shall have the meanings ascribed to them below:

(a) "Collection" means the gathering <sup>of information for</sup> ~~and storage,~~  
~~or the gathering and dissemination, of information.~~ <sup>or both.</sup>

(b) "United States" includes the United States, its territories, possessions, and the Commonwealth of Puerto Rico.

(c) "Domestic activities" means activities within the United States.

(d) "Foreign intelligence" means information, other than foreign counterintelligence, on the capabilities, intentions, and activities of foreign powers, ~~or their agents.~~ <sup>organizations or persons.</sup>

(e) "Foreign counterintelligence" means ~~information on the capabilities, intentions and activities of foreign powers or their agents with respect to their collection, evaluation or dissemination of intelligence about the United States.~~ <sup>the activities conducted to protect the United States from foreign espionage, sabotage, subversion, assassination or terrorism.</sup>

(f) "Infiltration" means secret participation in an organization for the purpose of reporting on it.

(g) "Incidental reception" means the receipt of information, whose collection by an agency is otherwise prohibited by this order, during the course of such agency's authorized foreign intelligence or foreign counterintelligence activities, without specific intent to secure such information ~~from a United States citizen~~ and without direction or request from any other agency of the United States Government.

(h) "Foreign intelligence agency" means any department or agency, or division thereof, which is primarily engaged in foreign intelligence or foreign counterintelligence.

SECTION II. The following activities shall not be conducted either by any foreign intelligence agency or by any other department or agency in pursuit of foreign intelligence or foreign counterintelligence:

(a) Collection, evaluation, correlation or analysis, of information concerning the domestic activities of United States citizens; provided, however, that nothing herein shall preclude:

(1) the collection, evaluation, correlation and analysis of information of foreign intelligence or foreign counterintelligence interest derived from public sources; or

(2) the collection, evaluation, correlation and analysis of:

(i) information on current or former employees (including employees of other Federal departments or agencies detailed for service with the foreign intelligence agency); applicants for employment with such agency; actual or imminent voluntary sources or contacts; current and former contractors and current or former employees or applicants for employment by such contractors; and all persons not included above who must be given authorized access to information which could disclose classified information and counterintelligence and foreign intelligence (sources and methods; provided, however, that the same is done only in accordance with law and by authority from the head of such agency to determine the fitness of such persons to become or remain associated with such agency or to have such access, or in the case of a voluntary source or contact, to determine suitability or credibility, or otherwise to the extent the head of such agency determines is necessary (classified information and) (and counterintelligence) to protect foreign intelligence sources and methods from unauthorized disclosure.

(ii) Information from or about a United States citizen collected abroad or from foreign sources in the course of an authorized foreign intelligence or foreign counterintelligence activity.

(iii) Foreign intelligence <sup>(or counterintelligence)</sup> from United States citizens provided on a witting and voluntary basis. The foreign intelligence agency shall disclose its identity when seeking such foreign intelligence <sup>(or counterintelligence)</sup> within the United States from United States citizens.

When collection of foreign intelligence <sup>(or counterintelligence)</sup> within the United States from <sup>(United States citizens or)</sup> persons who are not United States citizens results in the incidental reception of information from <sup>(United States)</sup> or about unknowing citizens, however, the receiving agency shall be permitted to make appropriate use of such information as permitted under this Order.

(iv) Administrative information of the kind customarily developed and utilized by departments and agencies of the Federal government.

(3) the transmission of any information concerning <sup>or possible criminal</sup> criminal activities that is received through incidental reception to any law enforcement agency with appropriate jurisdiction.

(4) the retention of information collected in <sup>possible</sup> violation of this Order to maintain a record for possible court action.

(j) → (b)

(c) (b) Electronic interception of wire or oral communication the specific purpose of which is to obtain the communications of United States citizens within the United States without the consent of the subject or one of the parties thereof or without prior written authorization of the Attorney General.

(d) (e) Testing of electronic surveillance and monitoring equipment within the United States in violation of law. All such tests shall be with the consent of the persons monitored unless:

(1) it is technically impractical to test such surveillance and monitoring equipment in a manner that would include consent; and

(2) any communication intercepted is disclosed only to test engineers and is destroyed immediately upon termination of the test.

(e) (d) Any opening of mail or examination of envelopes contrary to the explicit provisions of United States postal laws and regulations.

(1) → (4) ● ●

omit  
from  
E.O.

~~(c) Overseas activities other than those intended solely for obtaining necessary foreign intelligence and foreign counter-intelligence or directly supporting such intelligence gathering activities, unless such activities shall have been determined by the President to be important to the national security of the United States.~~

(g) (4) Infiltration in the United States of any organizations of United States citizens.

(h) (4) Experimentation with drugs on human subjects, except with the informed consent of each such human subject and in accordance with the guidelines of the National Commission for the Protection of Human Subjects for Biomedical and Behavioral Research.

~~move to Section III~~ (h) Provision of services, equipment, personnel or facilities to the Law Enforcement Assistance Administration or State or local police organizations of the United States except as expressly authorized by law. ]

(f) (4) Access to Federal income tax returns or tax information in violation of statutes and regulations.

(b) (4) Physical surveillance of persons within the United States except to the extent that such surveillance is not in violation of the law and is:

(i) Surveillance, in coordination with the Federal Bureau of Investigation, of foreign nationals in the United States in connection with foreign intelligence or counterintelligence operations;

(ii) Surveillance of a person involved with a foreign national under subparagraph (i), but only to the extent necessary to identify such person; or

(iii) Surveillance, upon written approval by the head of the foreign intelligence agency, of individuals currently or formerly employed by that agency, its present or former contractors, or such contractors' employees, for the purpose (classified information and) (and counterintelligence) of protecting foreign intelligence sources and methods from unauthorized disclosure.

(D)(X) Operation of a proprietary company on a commercially competitive basis with United States businesses except to the minimum extent necessary to establish commercial credibility. No investments by a proprietary company shall be made on the basis of any substantive intelligence not available to the public.

SECTION III. insert on following page.

SECTION III. ~~One foreign intelligence agency shall~~ <sup>(b)</sup> participate in or fund any law enforcement activity within the United States except as may be explicitly authorized by law. Provided, that this prohibition shall not preclude:

(1) (X) Cooperation between a foreign intelligence agency and appropriate law enforcement agencies for the purpose of protecting

SECTION III. No foreign intelligence agency shall:

(a) Provide services, equipment, personnel or facilities to the Law Enforcement Assistance Administration or State or local police organizations of the United States except as expressly authorized by law, or [Taken from Section II (h)]

the personnel and facilities of the foreign intelligence agency or preventing espionage or other criminal activity related to foreign intelligence or foreign counterintelligence; or

(2) (b) Provision of specialized equipment or technical knowledge for use by any other Federal department or agency.

SECTION IV. Foreign intelligence agency personnel may be detailed elsewhere within the Federal government as authorized by law. Employees so detailed shall be responsible to the host agency and shall not report to their parent agency on the affairs of the host agency except as may be directed by <sup>(the host)</sup> ~~that~~ agency. The head of the host agency and any subsequent successor shall be informed of the detailee's association with the parent agency.

SECTION V. Nothing in this Order shall prohibit any agency having law enforcement responsibilities from discharging such responsibilities pursuant to law. Nor shall this Order apply to any activities of the Federal Bureau of Investigation.

SECTION VI. This Order does not set forth all restrictions under which foreign intelligence agencies are obligated to operate, and it shall not be construed to derogate from any other restrictions imposed by law or by applicable administrative rules, regulations, or directives or to limit the authority of the National Security Council or the head of any foreign intelligence agency to promulgate and enforce <sup>(with National Security Council approval)</sup> further restrictions on the activities of such agency.